

Adopted	Rejected
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## COMMITTEE REPORT

YES:	7
NO:	5

### MR. SPEAKER:

*Your Committee on Education, to which was referred House Bill 1076, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 20-29-3-12, AS ADDED BY P.L.1-2005,
- 4       SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5       JULY 1, 2009]: Sec. 12. The board shall organize the board's staff to
- 6       provide for the functions of:
- 7       (1) unit determination;
- 8       (2) unfair labor practice processing;
- 9       (3) conciliation and mediation;
- 10       (4) factfinding;
- 11       **(5) mediation and final offer selection; and**
- 12       ~~(5)~~ **(6)** research.
- 13       SECTION 2. IC 20-29-3-13, AS ADDED BY P.L.1-2005,
- 14       SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2009]: Sec. 13. In connection with conciliation and mediation,  
~~or factfinding, or mediation and final offer selection,~~ the board may:

(1) use full-time employees; or

(2) appoint employees for specific cases from a panel the board  
 establishes.

SECTION 3. IC 20-29-6-6, AS ADDED BY P.L.1-2005, SECTION  
 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 2009]: Sec. 6. The obligation to bargain collectively does not include  
 the final approval of a contract concerning any items. Agreements  
 reached through collective bargaining are binding as a contract only if  
 ratified by the governing body of the school corporation and the  
 exclusive representative. The obligation to bargain collectively does  
 not require the school employer or the exclusive representative to agree  
 to a proposal of the other or to make a concession to the other. **The  
 obligation to bargain collectively is subject to the final offer  
 process if mediation and final offer selection is elected under  
 section 12(b) of this chapter.**

SECTION 4. IC 20-29-6-12, AS ADDED BY P.L.1-2005,  
 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2009]: Sec. 12. **(a)** Collective bargaining between a school  
~~corporation employer~~ and the exclusive representative shall begin:

(1) not later than one hundred eighty (180) days before the  
~~submission date of a budget by a school employer;~~ **first day of  
 the first term or semester of a school year; and**

(2) **when the exclusive representative notifies the school  
 employer and the board of the start of bargaining.**

**(b) The school employer and the exclusive representative shall  
 use the collective bargaining procedures set forth in this chapter  
 unless the exclusive representative, at the time an impasse is  
 declared by either party, elects to use the mediation and final offer  
 selection procedure set forth in IC 20-29-8-15 through  
 IC 20-29-8-30.**

SECTION 5. IC 20-29-6-14, AS ADDED BY P.L.1-2005,  
 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2009]: Sec. 14. If an agreement has not been reached on the  
 items to be bargained collectively seventy-five (75) days before the  
~~submission date of a budget by a school employer;~~ **first day of the first  
 term or semester of a school year,** the board shall initiate mediation.

SECTION 6. IC 20-29-6-15, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. If an agreement has not been reached on the items to be bargained collectively forty-five (45) days before the ~~submission date of a budget by a school employer; first day of the first term or semester of a school year~~, the board shall initiate factfinding.

SECTION 7. IC 20-29-6-16, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) If an agreement has not been reached on the items to be bargained collectively fourteen (14) days before the ~~submission date of a budget by a school employer; first day of the first term or semester of a school year~~, the parties shall continue the status quo, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this status quo period, in order to allow the successful resolution of the dispute, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(b) This section may not be construed as relieving the school employer or the school employee organization from the duty to bargain collectively until a mutual agreement has been reached and a contract entered as called for in this chapter."

Page 1, after line 8, begin a new paragraph and insert:

"SECTION 9. IC 20-29-8-11, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. Mediators and factfinders may not be employed on a full-time or part-time basis by:

(1) a public school employer that is a school corporation; or

(2) an organization of:

(A) public employees; or

(B) public employers; ~~or~~

(3) affiliates of an organization described in subdivision (2)(A) or (2)(B); ~~or~~

**(4) a firm that represents public employers or public employees in the implementation of this article.**

SECTION 10. IC 20-29-8-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15. Sections 16 through 30 of this chapter apply to collective bargaining in which the exclusive**

1 **representative has elected to proceed under sections 16 through 30**  
 2 **of this chapter and has notified the school employer and the board**  
 3 **as provided in IC 20-29-6-12.**

4 SECTION 11. IC 20-29-8-16 IS ADDED TO THE INDIANA  
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 2009]: **Sec. 16. In addition to the impasse**  
 7 **procedures specified in this chapter, a school employer and an**  
 8 **exclusive representative may agree in writing to a dispute**  
 9 **settlement procedure. A copy of the agreement shall be filed by the**  
 10 **parties with the board. If the parties agree to a form of binding**  
 11 **arbitration, the arbitrator shall give weight to the factors listed in**  
 12 **section 24 of this chapter. The arbitration award is subject to**  
 13 **appeal under sections 26 through 29 of this chapter.**

14 SECTION 12. IC 20-29-8-17 IS ADDED TO THE INDIANA  
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 16 [EFFECTIVE JULY 1, 2009]: **Sec. 17. If the parties have not**  
 17 **reached an agreement at least sixty (60) days before the first day**  
 18 **of the first term or semester of a school year, the parties shall**  
 19 **notify the board that an impasse exists, and the board shall initiate**  
 20 **mediation and arbitration.**

21 SECTION 13. IC 20-29-8-18 IS ADDED TO THE INDIANA  
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 23 [EFFECTIVE JULY 1, 2009]: **Sec. 18. Not later than fifteen (15)**  
 24 **days after the board receives notice of an impasse under section 17**  
 25 **of this chapter, each party shall submit to the board and to the**  
 26 **other party its final offer on each item remaining at impasse that**  
 27 **is also an item listed in IC 20-29-6-4. The parties also shall file with**  
 28 **the board a joint stipulation with respect to all matters on which**  
 29 **the parties have previously agreed, for inclusion in the new or**  
 30 **amended collective bargaining agreement. All final offers and joint**  
 31 **stipulations filed with the board are open to public inspection.**

32 SECTION 14. IC 20-29-8-19 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2009]: **Sec. 19. (a) Not later than three (3)**  
 35 **days after the board receives notice of an impasse under section 17**  
 36 **of this chapter, the board shall submit to the parties a list of five (5)**  
 37 **competent and experienced mediator-arbitrators, who must be**  
 38 **representatives of the interests of the public, but who may not be**

1 employees of the board.

2 (b) Not later than five (5) days after the parties receive the list  
3 of names, the parties shall agree on a name or alternately strike a  
4 name from the list until one (1) name remains. The parties shall  
5 determine by lot who strikes the first name. The parties shall notify  
6 the board of the mediator-arbitrator chosen.

7 (c) If a mediator-arbitrator has not been chosen through  
8 agreement or striking names within the five (5) day limit, the board  
9 shall select a mediator-arbitrator from the list.

10 (d) Upon receipt of notice from the parties or after the board  
11 makes a selection, the board shall formally appoint the  
12 mediator-arbitrator and submit to the mediator-arbitrator the  
13 final offers and joint stipulation of the parties.

14 SECTION 15. IC 20-29-8-20 IS ADDED TO THE INDIANA  
15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2009]: **Sec. 20. A mediator-arbitrator shall**  
17 **begin mediation not later than ten (10) days after the**  
18 **mediator-arbitrator is appointed under section 19 of this chapter.**  
19 **The final offers of the parties, as transmitted by the board to the**  
20 **mediator-arbitrator, must serve as the mutual basis for mediation**  
21 **and continued negotiations between the parties with regard to**  
22 **issues in dispute that have not been agreed upon by the parties. All**  
23 **mediation sessions under this section or section 21 of this chapter**  
24 **must be private.**

25 SECTION 16. IC 20-29-8-21 IS ADDED TO THE INDIANA  
26 CODE AS A NEW SECTION TO READ AS FOLLOWS  
27 [EFFECTIVE JULY 1, 2009]: **Sec. 21. (a) For seven (7) successive**  
28 **days after the first mediation session under section 20 of this**  
29 **chapter, the mediator-arbitrator shall mediate the dispute and**  
30 **encourage a voluntary and mutual settlement by the parties.**  
31 **During the first five (5) days of the seven (7) successive day period,**  
32 **either party may unilaterally modify in writing any item in the**  
33 **party's final offer. At the end of the five (5) day period, each party**  
34 **shall certify in writing to the board the changes that have been**  
35 **made in the party's final offer during mediation, with a copy sent**  
36 **to the mediator-arbitrator and to the other party. During the last**  
37 **two (2) days of the seven (7) successive day period, a modification**  
38 **of either party's final offer may be made only with the consent of**

1       the other party.

2       (b) Any modifications made under subsection (a) shall be  
3       certified by the parties to the board, with a copy sent to the  
4       mediator-arbitrator.

5       SECTION 17. IC 20-29-8-22 IS ADDED TO THE INDIANA  
6       CODE AS A NEW SECTION TO READ AS FOLLOWS  
7       [EFFECTIVE JULY 1, 2009]: **Sec. 22. (a) If the parties have failed**  
8       **to reach a voluntary and mutual settlement during the seven (7)**  
9       **successive day mediation period under section 21 of this chapter,**  
10      **the dispute shall be resolved by final offer item by item selections.**

11      (b) Not later than five (5) days after the end of the mediation  
12      period and before selecting the final offers, the mediator-arbitrator  
13      shall conduct a public hearing to provide an opportunity to both  
14      parties to present evidence and argument in support of their final  
15      offers.

16      (c) Not later than ten (10) days after the completion of the  
17      hearing, the mediator-arbitrator shall in writing select the final  
18      offer that, in the mediator-arbitrator's judgment, is the more  
19      reasonable and shall in writing state reasons for the selection. The  
20      mediator-arbitrator's selection and the reasons shall be delivered  
21      to the board and to each party. The final offers selected, along with  
22      the stipulation of items already agreed to, become the agreement  
23      between the parties and are final and binding upon the parties,  
24      subject to section 23 and sections 26 through 29 of this chapter.

25      SECTION 18. IC 20-29-8-23 IS ADDED TO THE INDIANA  
26      CODE AS A NEW SECTION TO READ AS FOLLOWS  
27      [EFFECTIVE JULY 1, 2009]: **Sec. 23. The parties to a mediation**  
28      **under section 20 or 21 of this chapter may voluntarily and**  
29      **mutually agree upon the terms and conditions of a contract at any**  
30      **time.**

31      SECTION 19. IC 20-29-8-24 IS ADDED TO THE INDIANA  
32      CODE AS A NEW SECTION TO READ AS FOLLOWS  
33      [EFFECTIVE JULY 1, 2009]: **Sec. 24. In making a decision under**  
34      **the final offer selection procedures authorized by section 22 of this**  
35      **chapter, a mediator-arbitrator shall give weight to the following**  
36      **factors:**

37      (1) Past memoranda of agreement and contracts between the  
38      parties.

(2) Comparison of wages, hours, terms of employment, and conditions of employment of the school employees involved with those of other employees doing comparable work, giving consideration to factors peculiar to the work involved.

(3) Comparison of wages, hours, terms of employment, and conditions of employment with similar employment in private business and industry.

(4) The average consumer prices for goods and services, commonly known as the cost of living.

(5) The effect on the educational atmosphere or environment.

SECTION 20. IC 20-29-8-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25. (a) If an agreement has not been reached on the items to be bargained collectively fourteen (14) days before the first day of the first term or semester of a school year, the parties shall continue the status quo, and the employer may issue tentative individual contracts and prepare a budget based on the individual contracts.**

**(b) During the status quo period, to permit the successful resolution of the dispute, the employer may not unilaterally change the terms or conditions of employment that are issues in dispute.**

**(c) This section does not relieve the school employer or the school employee organization from the duty to follow the procedures set forth in this chapter.**

SECTION 21. IC 20-29-8-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 26. Not later than fifteen (15) days after the mediator-arbitrator's final offer selection under section 22 of this chapter, either party may petition the circuit or superior court of the county in which the school employer's administrative office is located to set the final offer selection aside. At any time after the fifteen (15) day period, either party may petition the circuit or superior court of the county in which the school employer's administrative office is located to enforce a final offer selection. The court shall hear these matters on an expedited basis and not later than thirty (30) days after the filing of a petition under this section. The court must enforce the final offer selection unless the court finds by a preponderance of the evidence that the**

1 decision is:

- 2 (1) illegal;
- 3 (2) in excess of the mediator-arbitrator's power; or
- 4 (3) procured by fraud, bribery, or corruption.

5 SECTION 22. IC 20-29-8-27 IS ADDED TO THE INDIANA  
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2009]: **Sec. 27. If a court sets aside a final**  
 8 **offer selection because of illegality or excess of power under section**  
 9 **26 of this chapter, the selection shall be remanded to the same**  
 10 **mediator-arbitrator who heard the selection the first time, subject**  
 11 **to the right of a party to appeal an adverse ruling of the court. The**  
 12 **mediator-arbitrator has the following choices on remand:**

- 13 (1) Affirm the earlier final offer selection minus any items set
- 14 aside by the court.
- 15 (2) Make a new determination on the original final offers
- 16 proposed by the parties after a new hearing or argument, at
- 17 the discretion of the mediator-arbitrator.

18 SECTION 23. IC 20-29-8-28 IS ADDED TO THE INDIANA  
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 20 [EFFECTIVE JULY 1, 2009]: **Sec. 28. If a court sets aside a final**  
 21 **offer selection because of fraud, bribery, or corruption under**  
 22 **section 26 of this chapter, the selection shall be remanded to the**  
 23 **board for an expedited hearing before a new mediator-arbitrator,**  
 24 **selected in the same manner as the original mediator-arbitrator,**  
 25 **subject to the right of a party to appeal an adverse ruling of the**  
 26 **court.**

27 SECTION 24. IC 20-29-8-29 IS ADDED TO THE INDIANA  
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2009]: **Sec. 29. An appeal under section 27 or**  
 30 **28 of this chapter shall be taken in the manner and to the same**  
 31 **extent as orders or judgments are taken in a civil action. Because**  
 32 **of the appeal's public importance, the appeal shall be advanced on**  
 33 **the docket for the consideration of the court.**

34 SECTION 25. IC 20-29-8-30 IS ADDED TO THE INDIANA  
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 36 [EFFECTIVE JULY 1, 2009]: **Sec. 30. A party who:**

- 37 (1) fails to implement a final offer selection; or
- 38 (2) appeals a final offer selection and does not ultimately



1           **prevail in court;**  
2           **under this chapter is liable for reasonable attorney's fees, interest**  
3           **on delayed monetary benefits, and other costs incurred in the**  
4           **action.**

5           SECTION 26. IC 20-29-2-17 IS REPEALED [EFFECTIVE JULY  
6           1, 2009].".

7           Renumber all SECTIONS consecutively.  
            (Reference is to HB 1076 as introduced.)

**and when so amended that said bill do pass.**

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Representative Porter